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HOUSE OF REPRESENTATIVES

REPORT
No. 625

GEORGE S. PASCHKE

JUNE 19, 1951.—Committed to the Committee of the Whole House and ordered to be printed

Mr. RODINO, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3966]

The Committee on the Judiciary, to whom was referred the bill (H. R. 3966) for the relief of George S. Paschke, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is to pay to George S. Paschke of Bremerton, Wash., \$1,668.34, in payment of all claims for loss of wages, corps, and personal property, and for medical expenses, resulting from his wrongful imprisonment by the United States Army from May 23, 1946 to June 7, 1946.

STATEMENT OF FACTS

The Department of the Army has made a thorough investigation of this claim and gives in detail the history of the proposed legislation and has no objection to the enactment of the bill.

The letter from the Department of the Army is as follows:

DEPARTMENT OF THE ARMY,
Washington 25, D. C., June 28, 1950.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: The Department of the Army would have no objection to the enactment of H. R. 4994, Eighty-first Congress, a bill for the relief of George S. Paschke, if it should be amended as hereinafter recommended.

This bill provides as follows: "That the Secretary of the Treasury is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to George S. Paschke, of Bremerton, Washington, the sum of \$1,668.34. The payment of such sum shall be in full settlement of all claims of the George S. Paschke against the United States for loss of wages, crops, and personal property, and for medical expenses, resulting from his wrongful imprisonment by the United States Army from May 23, 1946, to June 7, 1946."

The records of the Department of the Army show that George S. Paschke was born at Savage, Mont., on August 14, 1914, and that on October 22, 1930, he enlisted in Company E, One Hundred and Sixty-third Infantry, Montana National Guard. On December 10, 1931, he was transferred to the National Guard Reserve, and was honorably discharged therefrom on October 21, 1933. He reenlisted in Company G, One Hundred and Sixty-third Infantry, Montana National Guard, on May 19, 1938, and was transferred to the inactive National Guard on February 1, 1940. On June 22, 1940, he was transferred to Company G, One Hundred and Sixty-third Infantry. He was again transferred to the inactive National Guard on August 1, 1940. On September 16, 1940, he was again transferred to Company G, One Hundred and Sixty-third Infantry.

On or about September 8, 1940, while Mr. Paschke was residing in the State of Washington and employed at the Puget Sound Navy Yard, Bremerton, Wash., he received notice of the mobilization of the One Hundred and Sixty-third Infantry. He immediately sent a telegram to the Montana National Guard headquarters at Glasgow, Mont., requesting instructions as to whether he should continue his employment at the Puget Sound Navy Yard, which was classified as essential, or report for duty with the Montana National Guard. He received no answer to that telegram. On September 15, 1940, having failed to pass a welder's test, his services with the navy yard were terminated. A few weeks later Mr. Paschke met a former member of Company G, One Hundred and Sixty-third Infantry, and was told that said regiment was then stationed at Camp Murray, Wash. Shortly thereafter Mr. Paschke went to Camp Murray and reported to the first sergeant of Company G, One Hundred and Sixty-third Infantry. The first sergeant advised him that a letter had been written requesting that he be discharged from the Montana National Guard. The next day Mr. Paschke reported to the company commander and requested advice as to his status and the action that he should take. That officer told him that there was nothing to be done at that time and that he should return to his job, if he had one, and that after he received his discharge he could reenlist again if he desired to do so.

After the Selective Service Act of 1940 was enacted Mr. Paschke registered under the provisions of that act and was assigned Selective Service No. 3860. At that time he was classified II-B. It does not appear that he was called for induction into the military service until May 9, 1945, when he was ordered to report to Selective Service Board No. 6, Seattle, Wash. He was then employed at the Puget Sound Navy Yard. He was rejected for military service because he was found to be physically unfit and his classification was changed to II-B (F).

In an affidavit executed on March 27, 1950, Mr. Paschke stated:

"In October 1945 I went to the civilian personnel office, Puget Sound Navy Yard, where I was employed, and explained to them that I had never received my National Guard discharge. At this time I filled out the necessary form to trace my discharge papers as I realized the importance of having these papers in my possession. In December 1945, when I had received no reply on this matter I wrote a personal letter to the Adjutant General, Washington, D. C., requesting information regarding them, and asking if additional information from me was required. This letter was never answered.

"On or about May 6, 1946, after having received no reply regarding my discharge papers, I again went to the civilian personnel office, Puget Sound Navy Yard, and obtained new forms, and before I could have them notarized and sent in, I was picked up by Army investigation officers at the Puget Sound Navy Yard, Bremerton, Wash."

The evidence shows that on May 23, 1946, while Mr. Paschke was employed at the Puget Sound Navy Yard, he was taken into custody by a member of the military police, United States Army, on the charge that he was a deserter from the Army. It appears that Mr. Paschke protested his arrest, advising the military authorities that he had never been in the Army. He was first taken to the military police headquarters in Seattle, Wash., where he was detained for a period of 3 days and was then taken to Fort Lawton, Wash., where he was confined for about 10 days. On or about June 6, 1946, Mr. Paschke was taken to Fort Lewis, Wash., where he appears to have been released on the following day.

On December 23, 1946, Special Orders No. 50 were issued by the adjutant general of Montana honorably discharging Mr. Paschke from the National Guard of Montana, effective September 15, 1940. The pertinent portion of said orders reads as follows:

"1. Exigencies of the service having been such as to prevent the issuance of discharge orders at that time, Pvt. George S. Paschke, 20929977, Co. G, 163d Inf MNG is hereby honorably discharged eff 15 Sept 1940 by reason of permanent removal from the State per Par 72 Sect XII NGR 25 dtd 10 June 1940."

Mr. Paschke alleges that while he was being transported in an Army truck at Fort Lawton, Wash., on June 6, 1946, he received shoulder and neck injuries when the truck in which he was riding was backed up and suddenly stopped; that he reported this fact to the sergeant in charge and was told that he would be given medical attention when he arrived at Fort Lewis, but that no medical attention was given to him while he was in the custody of the military authorities.

In his affidavit of March 27, 1950, hereinbefore referred to, Mr. Paschke described the damages sustained by him as the result of his arrest and confinement by the military authorities as follows:

"* * * It was not until I was released that I had any medical attention, at which time I consulted my family doctor, and at intervals thereafter I consulted with other doctors. I was treated first by Dr. Cornell, Bremerton; then by Dr. Smith, Port Orchard; Dr. Crosby, Bremerton; and Dr. Darling, Gig Harbor. Recently, I was treated by Dr. Bramwell, Bremerton. Upon my release I presented myself to the Puget Sound Navy Yard for further duty, but was denied reemployment on the grounds that I had abandoned my position, and because of my arrest. After having presented satisfactory proof of my innocence from the adjutant general, State of Montana, from Capt. Arthur Stensland, former National Guard commander, Company G, One Hundred and Sixty-third Infantry, and Maj. Carl Hammerness of the same company, who gave me statements to the effect that at no time had I been in the Army, and had never deserted. After furnishing this evidence I was reinstated at the navy yard until April 1949, at which time it was necessary for me to quit due to the injury afore-mentioned. During all the time I was at the navy yard, I was treated at intervals for this same injury. I was unemployed until I secured a position driving a school bus for the South Kitsap school district, and worked 2½ months, after which I had to stop for a month again for this same injury. I resumed work on January 15, 1950.

"My rate of pay at the time of my arrest was \$9.04 per day. I lost 66 days from work on account of this arrest and figure the total pay lost as being \$596.64.

"Also, at the time of my arrest I had 10 acres of land, with about 1½ acres under cultivation, which included various types of berries and other garden produce, together with a number of chickens. The chickens died of starvation while I was in prison, and the truck garden also netted me nothing due to neglect. I would estimate this loss at being \$500, which amount also includes 20 loads of manure. The manure was on leased land, which lease expired that year, so this fertilizer was a total loss to me.

"It was necessary for me to do considerable traveling and absent myself from home in order to clear my records in connection with my imprisonment, and while I was away it was necessary for me to pay \$54 to Mr. Merle Kupka, Route 2, Box 427, Port Orchard, to look after my property. I would estimate my travel expenses, which included mileage of approximately 3,157 miles, as being \$315.70.

"I personally paid out about \$50 in doctor bills, the remaining portion of these bills covered by insurance.

"In addition to my wife, Margaret, I have two other dependents, a son Ronald, 4 years of age, and a daughter, Dolores, 7 years of age."

It appears from the foregoing affidavit that my reason of his arrest and confinement Mr. Paschke sustained damages in the aggregate amount of \$1,516.34 on account of the loss of wages, garden produce, chickens, and fertilizer and because of travel, medical, and other expenses.

On March 28, 1950, Mr. Paschke was examined at the Seattle Port of Embarkation by Capt. Hugh D. McGowan, Medical Corps, United States Army. After a very thorough examination of Mr. Paschke, Captain McGowan submitted a report of his examination in which he stated, in pertinent part, as follows:

"Diagnosis: Normal physical health with neurotic tendencies of the projection and constitutional inferiority type. There is no demonstrable organic disease relative to patient's incapacities."

It appears that the unfortunate arrest and confinement of Mr. Paschke by the United States Army in 1945 was not caused by any fault or negligence on his part but resulted from the failure of officials of the National Guard, occasioned by the exigencies of the service, to effect his formal discharge in 1940 after he had reported to Company G, One Hundred and Sixty-third Infantry, at Camp Murray, Wash., and was advised that action had been initiated to effect his discharge from the National Guard and that he should return to his job, if he had one.

While the United States is not legally liable for the damages sustained by Mr. Paschke as the result of his arrest and confinement, it is believed that under the

circumstances of this case he is justly and equitably entitled to compensation for such damages. H. R. 4994 would grant an award to the claimant \$152 in excess of the damages described in his affidavit of March 27, 1950, hereinbefore referred to. However, in view of the length of time that he was confined by the military authorities and the embarrassment that has been inflicted upon him in addition to the items of damage described in his affidavit, it is the view of the Department of the Army that the proposed award of \$1,668.34 provided in H. R. 4994 is fair and reasonable. The Department, accordingly, would have no objection to the granting of an award to the claimant in that amount.

In order that this bill may cover all of the damages sustained by the claimant as the result of his arrest and confinement it is recommended that the text of the bill be amended to read as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to George S. Paschke, of Bremerton, Washington, the sum of \$1,668.34, in full settlement of all claims against the United States for the damages sustained by him as the result of his wrongful arrest by a member of the United States Army on May 23, 1946, and his confinement by the Army from that date to June 7, 1946: Provided, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

Mr. Paschke has no remedy under the Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 931), as revised and codified by the act of June 25, 1948 (62 Stat. 933; 28 U. S. C. 1346 (b)), and as amended by the act of April 25, 1949 (Public Law 55, 81st Cong.), for the reason that said act, as revised and amended, specifically provides that the provisions thereof shall not apply to any claim arising out of false arrest or false imprisonment (62 Stat. 984; 28 U. S. C. 2680). There is no other statute under which his claim may be paid.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

FRANK PACE, Jr.,
Secretary of the Army.

AFFIDAVIT

STATE OF WASHINGTON.

County of King, ss:

Personally appeared before me, the undersigned authority to administer oaths, George S. Paschke, who after being first sworn according to law, hereby deposes and says that:

"I was born August 14, 1914, at Savage, Mont. I enlisted in the National Guard at Culbertson, Mont., and was assigned to Company E, One Hundred Sixty-third Infantry, and served out the 3-year enlistment. In 1937 I again enlisted in the National Guard, at Glasgow, Mont., and was assigned to Company G, One Hundred Sixty-third Infantry. In 1940 when the National Guard was called into service I was employed as an electric welder at the Puget Sound Navy Yard. On or about September 8, 1940, I received notice of mobilization from the National Guard headquarters, Glasgow, Mont. I immediately wired and requested information as to whether I should continue on an essential job or report for duty, asking the place to report and requesting an immediate answer. This wire was never acknowledged. Then on or about the 1st of October 1940 I met a former member of my company, who informed me that they were stationed at Camp Murray, Wash. I thereupon made a trip from Seattle to Camp Murray and reported to First Sergeant Bouchea, requesting information as to my status and whether I could rejoin my former outfit. Sergeant Bouchea informed me he had received my wire and had put in for my discharge, and that I was off the payroll. I stayed overnight and the next day went to see Major Hammerness, company commander, and again requested my status and permission to rejoin my outfit. Major Hammerness informed me there was nothing he could do at that time, and said that if I had a job I should return to it, stating that when I received my discharge I could then reenlist if I so desired.

"When the draft law was passed I registered and received my draft No. 3860, and was classified 11-B, I held this classification until May 9, 1945, when I was called for induction. I reported to local draft board No. 6, Seattle, Wash. I was rejected as physically unfit for military service, and received a new classification of 11-B (f) on May 21, 1945.

"In October 1945 I went to the civilian personnel office, Puget Sound Navy Yard, where I was employed, and explained to them that I had never received my National Guard discharge. At this time I filled out the necessary form to trace my discharge papers as I realized the importance of having these papers in my possession. In December 1945, when I had received no reply on this matter I wrote a personal letter to the Adjutant General, Washington, D. C., requesting information regarding them, and asking if additional information from me was required. This letter was never answered.

"On or about May 6, 1946, after having received no reply regarding my discharge papers, I again went to the civilian personnel office, Puget Sound Navy Yard, and obtained new forms, and before I could have them notarized and sent in, I was picked up by Army investigation officers at the Puget Sound Navy Yard, Bremerton, Wash.

"On May 23, 1946, at which time I was employed as a machinist's helper at the Puget Sound Navy Yard, and while I was on duty aboard the U. S. S. *Bunker Hill*, a special police, whose name I do not know, informed me 'You're under arrest'. When I asked him why he replied, 'I think you know the reason.' He took me to the naval police station at the yard. A military police Army sergeant, by the name of Wendlin, was there and he accompanied me to my home to allow me to make preparations for the feeding of my stock and care of my garden during my absence. The charge against me was desertion from the Army. I explained that I had never been in the Army, but was informed that it would be necessary to remain in custody. I was taken to Seattle and placed in a military jail located at about Seventh Avenue and Bell Street, where I was held for approximately 3 days. From there I was transferred to the Fort Lawton prison where I was held for, I believe it was, 10 days. From there I was transferred to Fort Lewis prison where I was held for a day or so. At that time I was released for the reason that there were no grounds for arresting me in the first place.

"While I was a prisoner at Fort Lawton, the morning we left for Fort Lewis, two truckloads of us were taken to the stockade for breakfast. This was on or about June 6, 1946. For the return trip to our cells all the men were placed in one truck. It was extremely crowded, one of the prisoners complained, and I heard one of the drivers say, 'Let's give them something to complain about.' They then backed the truck, slammed on the brakes, and the prisoners were thrown violently about. I was at the rear of the truck and was thrown against some sort of a protrusion on the door which crushed my shoulder and my neck was snapped. Later on, some sergeant said that I should be taken to the hospital at Fort Lewis, when we arrived there, but upon our arrival when I asked about this I was told 'We don't know anything about it.' And I was told to stay in line. It was not until I was released that I had any medical attention, at which time I consulted my family doctor, and at intervals thereafter I consulted with other doctors. I was treated first by Dr. Cornell, Bremerton; then by Dr. Smith, Port Orchard; Dr. Crosby, Bremerton; and Dr. Darling, Gig Harbor. Recently, I was treated by Dr. Bramwell, Bremerton. Upon my release I presented myself to the Puget Sound Navy Yard for further duty, but was denied reemployment on the grounds that I had abandoned my position, and because of my arrest. After having presented satisfactory proof of my innocence from the adjutant general, State of Montana, from Capt. Arthur Stensland, former National Guard commander, Company G, One Hundred and Sixty-third Infantry, and Maj. Carl Hammerness of the same company, who gave me statements to the effect that at no time had I been in the Army, and had never deserted. After furnishing this evidence I was reinstated at the navy yard until April 1949, at which time it was necessary for me to quit due to the injury afore-mentioned. During all the time I was at the navy yard I was treated at intervals for this same injury. I was unemployed until I secured a position driving a school bus for the South Kitsap school district, and worked 2½ months, after which I had to stop for a month again for this same injury. I resumed work on January 15, 1950.

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together with a number of chickens. The chickens died of starvation while I was in prison, and the truck garden also netted me nothing, due to neglect. I would estimate this loss at being \$500, which amount also includes 20 loads of manure. The manure was on leased land, which lease expired that year, so this fertilizer was a total loss to me.

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"In addition to my wife, Margaret, I have two other dependents, a son Ronald, 4 years of age, and a daughter, Delores, 7 years of age.

"I was eventually cleared of all charges, as per the photostatic copies of letters and orders attached."

Further deponent saith not.

GEORGE S. PASCHKE.

Subscribed and sworn to before me at Seattle, Wash., this 27th day of March 1950.

J. F. TWOHIG,
Major, AGD, Port Claims Officer.

